UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/1994/283
10 March 1994

ORIGINAL: ENGLISH

THE SITUATION CONCERNING WESTERN SAHARA

Report by the Secretary-General

I. INTRODUCTION

1. The present report is submitted to the Security Council in pursuance of Council resolution 809 (1993) of 2 March 1993, my previous report to the Council of 24 November 1993 (S/26797) and the letter addressed to me by the President of the Security Council dated 6 December 1993 (S/26848). It is divided into four main sections. Sections II and III below provide an update of the military aspects and the civil police component of the United Nations Mission for the Referendum in Western Sahara (MINURSO) since my report of 24 November 1993. Section IV reports on all subsequent developments. Section V contains my observations and recommendations.

II. MILITARY ASPECTS

2. As of 1 March 1994, the military component of MINURSO, headed by the Force Commander, Brigadier-General André Van Baelen (Belgium), totalled 315 personnel, comprising 216 military observers and 99 military support personnel, as follows:

(a) United Nations military observers and headquarters personnel

Argentina	5
Australia	2
Austria	1
Bangladesh	7
Belgium	1
Canada	16
China	19
Egypt	9
France	30
Ghana	4
Greece	1
Guinea	1
Honduras	14

	Ireland	6
	Italy	6
	Kenya	10
	Malaysia	6
	Nigeria	1
	Pakistan	1
	Poland	2
	Russia	20
	Switzerland	1
	Tunisia	9
	United States of America	30
	Venezuela	14
	Total	216
(b)	Contingents	
(i)	Signals Unit: Australia	43
(ii)	Movement control: Canada	14
	Honduras	2
(iii)	Medical Unit: Switzerland	40
	Total	99
	Grand total	315

3. Pending the fulfilment of the conditions necessary for the commencement of the transitional period in accordance with the settlement plan (S/21360 and S/22464 and Corr.1), the military mandate of MINURSO remains restricted to monitoring and verifying the cease-fire in effect since 6 September 1991. Accordingly, the deployment of the military component of MINURSO continues to be limited to military observers and the necessary military support personnel.

4. Both parties have continued to support the cease-fire and there has been a significant decrease in the number of cease-fire violations. Indeed, while MINURSO reported 23 violations of the cease-fire between 1 January and 31 October 1993, only 2 violations were reported for the period from 1 November 1993 to 15 February 1994. These two violations were related to Frente POLISARIO troop movements.

5. Minefields continue to pose serious hazards. While there have been no incidents of explosions of mines involving MINURSO personnel during the past three months, one such explosion caused the death of two Frente POLISARIO members and injured three others and another killed three Moroccans.

6. As mentioned in my last report, the harsh weather conditions in the Mission area are taking a toll of MINURSO's equipment. A major overhaul of the Mission's equipment will soon be necessary. Moreover, additional logistic support would be required in the event of full deployment of the Mission following the commencement of the transitional period.

7. I would like to inform the Security Council that I have been advised by the Governments of Australia, Canada and Switzerland, which provide the signals, movement control and medical support units respectively of their intention to withdraw these units from MINURSO between May and June 1994. In addition, the Government of Canada has indicated that it also intends to withdraw its military observers at that time. It should be noted that the Government of the United Kingdom of Great Britain and Northern Ireland completed the withdrawal of its military observers from MINURSO in October 1993.

8. With the withdrawal of the Australian, Canadian and Swiss units, the entire military support personnel and some of the equipment would have to be replaced. A number of Member States have been approached for replacement units but none have so far provided a positive response. It is my hope that such responses will be forthcoming in the near future. Indeed, unless replacements are identified in a timely manner, the withdrawal of the existing units may seriously undermine MINURSO's capacity to carry out its mandate effectively. I would therefore like to invite the Governments of Australia, Canada and Switzerland to consider maintaining, as far as possible, their present contribution to MINURSO until appropriate arrangements can be put in place for their replacement. In this connection, it should be recalled that some of the present support units have been provided on a voluntary basis and that their replacement, if not on the same basis, would have financial implications for MINURSO's budget.

9. I would like to reiterate my deep appreciation to all Governments that have contributed military observers or support personnel and pay tribute once more to all military observers and support personnel for their contribution to the maintenance of the cease-fire in Western Sahara.

III. CIVIL POLICE

10. During the reporting period, the civilian police contingent provided by the Government of Belgium, consisting of five officers, has been replaced by a contingent of the same size, contributed by the Government of Uruguay. As a result, the Security Unit of MINURSO is now composed of 26 police officers, including the Police Commissioner, Colonel Jürgen Friedrich Reimann (Germany):

Austria	6
Germany	5
Malaysia	5
Togo	5
Uruguay	5
Total	26

11. The main responsibility of the security component of MINURSO will be to ensure that order is maintained in and around the identification and registration offices and to monitor the activities of the existing police forces so as to ensure that they are acting in strict accordance with the settlement

plan. The present activities of the police officers, who are on 24-hour standby at Laayoune and Tindouf, are complementary to the work of the Identification Commission and include coordination of logistics, technical and physical support. In the event of MINURSO's full deployment and an increase in the size and scope of the activities of the Identification Commission, the police contingent will likewise have to be increased.

IV. REGISTRATION PROCESS AND RELATED QUESTIONS

12. In the letter addressed to me by the President of the Security Council dated 6 December 1993 (S/26848), the Council had agreed that my compromise proposal referred to in paragraph 27 of my last report was a sound framework for determining potential participation in the referendum for self-determination of the people of Western Sahara as foreseen in the settlement plan, and expected that any difficulties with the compromise would be resolved by early 1994.

13. Pursuant to that letter, my Special Representative, Sahabzada Yaqub-Khan, visited the mission area from 2 to 13 January 1994 for consultations with the parties and the neighbouring countries on the current situation and ways of resolving the remaining difficulties. In Marrakesh, he was received by His Majesty King Hassan II of Morocco. In the area of Tindouf, he met informally with Frente POLISARIO officials and was the guest of honour at a dinner hosted by the Secretary-General of the Frente POLISARIO, Mr. Mohammed Abdelaziz. In Algiers, he held consultations with the Minister for Foreign Affairs, Mr. Mohamed Salah Dembri. In Nouakchott, he was received by the President of Mauritania, Mr. Maaouya Ould Sid'Ahmed Taya; meetings were also held with the Minister for Foreign Affairs and Cooperation, Mr. Mohamed Salem Ould Lekhal, and the Minister of Interior a.i., Mr. Ahmed Ould Minih. He provided assurances to allay the concerns of the Frente POLISARIO that, on the basis of the compromise, thousands of individuals foreign to the Territory might be included in the electorate. These assurances were confirmed and further elaborated in a letter dated 4 February 1994 from the Special Representative to the representative of the Frente POLISARIO in New York, to follow up the explanatory note on the compromise that he had addressed to the parties on 27 September 1993 (see annexes I and II).

14. The preparatory measures and timetable for the commencement of the registration and identification process were described in paragraphs 17 to 22 of my previous report. In the subsequent letter addressed to me by the President of the Security Council, the Council welcomed my determination to move ahead and proceed with voter registration and identification.

15. A preparatory meeting between the Identification Commission and Moroccan officials, scheduled to be held on 25 October 1993 in Laayoune, had to be postponed because its date coincided with the expected resumption of direct talks between the two parties in New York. As a result, the timetable the parties had agreed upon, described in paragraph 20 of my previous report, had to be adjusted. The Chairman of the Identification Commission, Mr. Erik Jensen, officially announced the launching of the process on 3 November 1993. He then held a further series of discussions in the course of that month with both the Government of Morocco and the Frente POLISARIO to adhere as far as possible to

the proposed timetable. During these consultations, both sides confirmed their intention to proceed expeditiously with the initial stage of the registration process in cooperation with MINURSO.

16. Accordingly, in late November 1993, the revised lists of the 1974 census, together with the supplement listing the names of additional persons expected to reach 18 years of age by 31 December 1993, were made accessible at 10 different locations in Laayoune and at several places in the El-Aiun refugee camp in the Tindouf area. Since December 1993, application forms sufficient for the preliminary registration of potential participants in the referendum have been supplied and distributed, initially through centres in Laayoune and in the Tindouf area. The Chairman and members of the Identification Commission have visited the centres on many occasions to observe the process, which appears to be proceeding smoothly. On 5 January 1994 in Laayoune, the Special Representative visited the centres currently open for the distribution and filling-in of the forms.

17. During consultations with Moroccan officials in late January in Rabat, the Chairman of the Identification Commission received assurances that the preliminary registration would be accelerated through the opening of additional offices in Laayoune and the other population centres in the Territory: Smara, Boujdour and Dakhla. This was confirmed by the Minister of Interior, Mr. Driss Basri, in a public statement on 8 February 1994. In pursuance of the relevant provisions of the settlement plan, offices are also to be established in a few locations outside the Territory where numbers of Western Saharans are known to be living. To this effect, the Identification Commission has held preliminary consultations with the Government of Mauritania, which concurred in late February in the Commission's proposal to establish offices in the Nouadhibou and Zouerate areas.

18. In January in the Tindouf area, the Chairman held several discussions with the Frente POLISARIO leadership as to how best to further the identification and registration process. He was advised that, in the El-Aiun refugee camp, the information requested on the application form was being provided in respect of persons counted in the 1974 census. As the Frente POLISARIO leadership considered that the request of the Security Council, in its resolution 809 (1993), was to start with the updated lists of the 1974 census, it intended to keep to that category of applicants until the Council determined otherwise. Although the information had yet to be transferred to the actual application forms, the Chairman was told that could be done as soon as a decision was reached on the interpretation of the criteria. In early February, the Chairman was informed that the required information had been collected from all concerned persons in the El-Aiun camp and that the same exercise had begun in the Awsard refugee camp also in the Tindouf area; by 15 February 1994, it was confirmed that the work had been completed in the Awsard camp and was about to begin in the Smara camp.

V. OBSERVATIONS

19. Assurances that objectivity and sound judgement would govern the Identification Commission at every stage of its work have so far proven to be insufficient to allay the Frente POLISARIO's concerns over the compromise on the interpretation and application of the criteria and procedures for establishing the identity of potential voters, which I presented to the parties during my visit to the mission area in early June 1993 (S/26185, annex I). In the meantime, the preliminary registration of applicants for participation in the referendum has proceeded in Laayoune and the Tindouf area as described in paragraphs 16 to 18 above. However, the completion of the identification and final registration of all eligible voters remains uncertain in the absence of agreement by the Frente POLISARIO to the compromise as a whole.

20. During the past four months, I have held consultations at the highest level with the two parties, the two neighbouring countries and the Organization of African Unity (OAU), to find ways of settling the remaining difficulties. For reasons explained in my last report and in the annexes to the present report, I remain confident that my proposals constitute a sound compromise and that they can be implemented in a fair and judicious manner. The apprehensions of the Frente POLISARIO will, I trust, be allayed by the reassurances contained in annex II. To this effect, I would also urge reflection on the built-in checks and balances in the referendum process, namely the high authority of the Security Council; the authority vested in the Secretary-General and delegated to his Special Representative under the settlement plan; the objectivity and sound judgement of the Identification Commission; the full freedom for appeals as provided for in the terms of reference of the Commission (S/26185, annex II); and the presence of observers of both parties and OAU during the process. In the interest of all concerned, the United Nations would thus guarantee the credibility of the referendum.

21. The concluding remarks of the compromise text put forward to the two parties pointed out that it could not of course be expected to meet all their concerns or conform entirely to their views. Nevertheless, the interpretation of the criteria and the procedures for verification represented a compromise between conflicting positions that was even-handed and fair. Furthermore, the text was aimed at establishing as judiciously as possible a Saharan electorate for determining the future of the Territory of Western Sahara.

22. The settlement plan stated that the goal on which all were agreed was the holding of a free, fair and impartial referendum for the people of Western Sahara, organized and conducted by the United Nations in cooperation with OAU and without any military or administrative constraints. Four essential conditions had to be met for that goal to be achieved and for MINURSO to be able to carry out its responsibilities effectively and impartially: support and backing of the Security Council; full cooperation of the two parties; cooperation and support of the neighbouring countries; and the necessary financial resources.

23. Taking fully into account the observations set forth in the preceding paragraphs, and in view of the decision to ensure that the referendum takes

place without any further delays, the options that the Security Council may wish to consider at this stage may be summarized as follows.

Option A

24. The Security Council would decide that the United Nations should proceed to hold the referendum regardless of the cooperation of either party. The process of identification and registration of all eligible voters should be completed on the basis of the compromise proposal of the Secretary-General, the terms of reference of the Identification Commission and the relevant provisions of the settlement plan. In pursuance of the goal set by the Security Council in the President's letter of 6 December 1993, the recommended timetable for (a) the work of the Identification Commission and (b) other main activities of MINURSO called for in the plan would be as follows, to enable the commencement of the transitional period on 1 August 1994 and the holding of the referendum by the end of 1994, taking into account the various steps foreseen in the initial timetable accepted by the parties and set forth in paragraph 52 of the Secretary-General's further detailed report on his implementation plan dated 19 April 1991 (S/22464):

(a) Work of the Identification Commission:

(i) March to May 1994. The Identification Commission analyses the applicants' data as they are received and begins to publish the results of its analysis;

(ii) 1 June 1994. The Commission begins to identify the persons qualified to participate in the referendum and to register them as eligible voters, upon presentation and verification of evidence establishing their identity and eligibility to vote. The Commission also announces arrangements for the appeals process;

(iii) September 1994. The Commission completes the identification and registration of voters. The Secretary-General approves and publishes the final list of voters.

(b) Other main activities called for in the settlement plan:

(i) Before 1 August 1994. The Special Representative designates locations for the confinement of Frente POLISARIO combatants; initiates discussions with the two parties about a code governing their conduct and that of their supporters during the referendum campaign; and, with the assistance of the independent jurist appointed by the Secretary-General, makes preliminary arrangements for the release of political prisoners or detainees. The International Committee of the Red Cross (ICRC) makes preliminary arrangements for the release of prisoners-of-war (POWs);

(ii) 1 August 1994. The transitional period begins. The combatants of the two sides are confined to designated locations;

(iii) As soon as possible after 1 August 1994. POWs are exchanged. Amnesties are proclaimed for political prisoners and detainees and for returnees. All political prisoners or detainees are released;

(iv) Not later than 1 October 1994. The reduction of Moroccan forces in the Territory is completed. All laws or measures that could obstruct the conduct of a free and fair referendum are suspended;

(v) 1 October 1994. The repatriation programme begins. The paramilitary units in the existing police forces are neutralized;

(vi) 15 November 1994. The repatriation programme is completed. The referendum campaign begins;

(vii) 7 to 15 December 1994. The referendum campaign ends and the referendum takes place. The results are proclaimed. The withdrawal of MINURSO personnel begins;

(viii) 31 December 1994. MINURSO's monitoring responsibilities arising from the referendum results are completed.

Option B

25. The Security Council would decide that the Identification Commission should continue its work during a prescribed period as described below. Meanwhile, the United Nations would continue its efforts to obtain the cooperation of both parties on the basis of the compromise proposal of the Secretary-General. At the end of the prescribed period, the Security Council would review the progress achieved and, on the basis of that review, would decide on the next course of action for the fulfilment of the United Nations mandate for Western Sahara. The prescribed period could end, for example, on 30 June 1994. During this period, it is expected that, in accordance with the timetable set forth in paragraph 24 (a) above, the Identification Commission would have completed the analysis of all applications received and would have begun to identify and register potential voters, on the premise that these proceedings would be based on the compromise proposal of the Secretary-General, the terms of reference of the Identification Commission, and the relevant provisions of the settlement plan.

Option C

26. The Security Council would conclude, on the basis of the present report, that the cooperation of both parties in the completion of the registration and identification process cannot be obtained at the present time and would decide either that the whole MINURSO operation should be phased out within a given time-frame or that the registration and identification process should be suspended but that a reduced United Nations military presence should be retained to encourage respect for the cease-fire.

27. As indicated in my recent report on the financing of MINURSO, the cost estimates for the maintenance of MINURSO based on the current authorized strength and mandate for the period from 1 January to 31 December 1994 amount to

$39.8 million gross ($37.4 million net), which is equivalent to $3.3 million gross ($3.1 million net) on a monthly basis. 1/ The financial implications of the above three options are set out in an addendum to the present report. It will be seen that very considerable additional resources would be required for option A, whose approximate cost would be $8.7 million gross on average per month for the period of nine months, from 1 April to 31 December 1994. The reduced presence envisaged under option C, which might consist of about 50 military observers with the necessary support, would cost approximately $617,000 gross per month for an indefinite period, after the repatriation of excess personnel at a cost of $1.9 million. It is to be noted also that either option A or option B would require Member States to be willing to provide the military personnel needed and that even maintenance of MINURSO at its present strength would require urgent action to obtain replacements for the contingents whose withdrawal has already been announced by their Governments.

28. The present report comes at a critical stage in the efforts that the United Nations has made to implement the settlement plan for Western Sahara. Following protracted delays since the inception of MINURSO in April 1991, every possible avenue has been explored by myself and my Special Representative to break the deadlock over the criteria and their interpretation so that the plan can be implemented. The fact that these efforts have not succeeded confronts the Security Council with a difficult choice between the options outlined above.

29. I would not wish to end my report without paying tribute to my Special Representative for his determined efforts to further the implementation of the settlement plan.

Notes

1/ A/48/848.

Annex I

[Original: French]

Explanatory note relating to the compromise proposed by the Secretary-General concerning the interpretation and application of the criteria for eligibility to vote, addressed from the Special Representative to the parties on 27 September 1993

1. As stated in his report of 28 July 1993 (S/26185), the Secretary-General made a visit to the mission area from 31 May to 4 June 1993. During the visit he submitted a compromise text to the two parties concerning the interpretation and application of the criteria for eligibility to vote. That text (see S/26185, annex I) is based on the talks held with the parties in August and September 1992 and on their observations concerning the broad lines of a possible compromise proposed by the Special Representative during a visit to the mission area in March 1993. As a follow-up to the Secretary-General's talks with the authorities concerned, the Special Representative held another round of meetings in the mission area in June 1993. During those and subsequent consultations, both parties stressed that they did not reject the proposed compromise, but expressed reservations on certain provisions of the text.

2. The reservations expressed by the authorities at Rabat centred on specific provisions dealing with tribal links with the Territory which, in their view, were unduly restrictive. Despite those concerns, Morocco has since acquiesced in the proposed compromise.

3. For its part Frente POLISARIO informed the Special Representative that it had accepted all the criteria for voter eligibility enumerated in the annex to the Secretary-General's report of 19 December 1991 (S/23299). With regard to the proposed compromise on the interpretation and application of those criteria, the Frente POLISARIO also conveyed its acceptance of oral testimony in support of individual applications for participation in the referendum. However, in expressing substantial reservations on the compromise, the Frente POLISARIO authorities proposed amendments to the text in a letter dated 19 June 1993 to the Secretary-General and also requested clarification of some of its provisions. Their reservations and proposed amendments primarily concern provisions relating to tribal links with the Territory and the composition of the tribal chiefs (shiukhs) qualified to testify, which they consider unduly permissive.

4. In the light of the replies received from the parties and the consultations undertaken by the Special Representative since then, the purpose of this note is to provide clarification on certain provisions of the compromise put forward by the Secretary-General without prejudice to other elements of the replies on which he may comment at a later stage.

Tribal affiliation

5. As agreed by both parties, the applicant's membership of a family group, that is, a subfraction of a tribe, existing within the Territory (see S/23299, annex, para. 21) is a prerequisite and does not per se grant the right to vote in the referendum for the self-determination of the people of Western Sahara. Once that prerequisite of tribal affiliation is met, the applicant must satisfy one of the other criteria for eligibility to vote.

6. The difficulty in applying that prerequisite is to find a mutually acceptable solution to the question of identifying the family group existing in the Territory.

7. Since the parties held radically conflicting positions on this issue, the Secretary-General put forward a compromise solution whereby any Saharan subfraction whose members were counted during the 1974 census would be considered as "existing within the Territory". The formula put forward by the Secretary-General provoked considerable concern in both camps and set off lengthy discussions with the two parties.

8. On the premise that subfractions are part of a whole - which is the tribe - Morocco expressed concern that the Secretary-General's formula would arbitrarily exclude subfractions no member of which was present in the Territory during the 1974 census, but which were none the less an integral part of a Saharan tribe of the Territory.

9. For its part, the Frente POLISARIO considered that the formula put forward by the Secretary-General was based on an interpretation that had no foundation in history or in the 1974 census. It should be noted that during previous consultations, the Frente POLISARIO had expressed the view that a subfraction was established in the Territory if the majority of its members had been counted in 1974 - an interpretation rejected by Morocco as arbitrary and inconsistent with historical and geographical facts (see S/25170, annex, para. 17).

10. Neither of the conflicting interpretations of the two parties would be easily applicable, the first being too imprecise and too broad and the second being mathematically impossible to formulate accurately. Once again those opposing views reflect the fundamentally divergent positions of the parties on the establishment of the electorate, one party wanting to make all persons who are Saharans eligible to participate in the referendum, and the other wanting to limit the electorate so far as possible to those counted in the Territory in 1974 so as to avoid the inclusion of individuals it regards as foreign to the Territory.

11. With due regard to those apparently irreconcilable positions and to the difficulty of defining the notion "people of Western Sahara" clearly and precisely, the above-mentioned compromise formula represents a practical and valid, although imperfect, basis for a preliminary selection of potential voters. The formula takes due account of the fact that the applicant belongs to a Saharan tribe and translates membership in that tribe in practical and applicable terms to the Territory of Western Sahara (that is the idea of "existing within the Territory" at the level of the subfraction of a tribe). In

that spirit the formula is based solely on the 1974 census which, while imperfect in itself, still provides the only demographic and tribal data about the Territory. Since it is to be applied for purposes of a preliminary voter selection, the applicants will still have to meet the criteria for voter eligibility before they can be registered on the final electoral roll.

12. With regard to the "small subfractions" (see S/26185, annex I, para. 23), the reference is to subfractions with few members.

13. The drawback of the proposal put forward by the Frente POLISARIO to allow the shiukhs elected in 1973 to decide which are the subfractions "existing" in the Territory of Western Sahara is that the shiukhs, coming from different parts of the Territory, will adopt the same positions as the two parties. While a shiukh is clearly best qualified to say that a person belongs to his subfraction, it is not nearly as obvious that all the shiukhs assembled will be able to settle the question of which subfractions of any fraction of a Saharan tribe exist within the Territory, that is, within its currently recognized international borders, and which subfractions of the same fraction of the same tribe do not belong to the Territory.

Shiukhs eligible to testify

14. Acceptance of oral testimony in the absence of supporting documents issued by the former Spanish authorities has also caused serious concern in the Frente POLISARIO. Having withdrawn its objection to the principle of oral testimony, the Frente POLISARIO is asking that only shiukhs elected in the Territory in 1973, or their eldest sons, should be eligible to testify, the point being to avoid any subsequent manipulation of the selection of shiukhs.

15. Morocco, on the other hand, contests the view that the 1973 list of shiukhs may not be changed, asserting that: the only election of shiukhs ever held in the Territory was the 1973 election under the Spanish authorities; shiukhs are traditionally coopted and not elected; not all Saharan shiukhs were necessarily in the Territory in 1973; and shiukhs elected in 1973 might subsequently have been replaced by others, since in principle their term of office was to last only five years.

16. The compromise proposed by the Secretary-General on the question of shiukhs allowed to testify is based on the historical circumstances of the period prior to the outbreak of the conflict in 1975 and on the fact that the shiukhs of that period are best able to relate the circumstances of the members of their respective subfractions - members who, having attained the age of 18 or over, will be eligible to participate in the referendum. Thus priority is given to the list of shiukhs elected in 1973, which covers all Saharan tribes and fractions present in the Territory at that time. The compromise proposed by the Secretary-General, however, provides for exceptions, such as the absence of an elected shiukh and of his eldest son, or the case of a Saharan subfraction whose members were included in the 1974 census but whose shiukh was not present in the Territory. If it transpires that neither of these cases obtains or applies, the question will no longer be relevant. In any event, all shiukhs other than those elected in 1973 on whom the Identification Commission might call would be from the period prior to 1975.

17. In this connection it should be noted that two lists of shiukhs are in existence: the first is the 1973 list, containing 193 names (including 5 "Procuradores en corte"); the second contains the names of 226 individuals who, at the time of their enumeration in the 1974 census, stated that they were shiukhs. The second list includes the great majority of the shiukhs elected in 1973 (others having neglected at the time of the census to say that they were shiukhs) as well as other people who were not elected in 1973 but wished to retain their traditional title. In these somewhat confused circumstances it would be difficult to argue that one or the other list should prevail.

Other issues

18. With regard to supporting documents, the Secretary-General's proposals do not consider traditional documents, such as certificates issued by an adl, as carrying the same weight as official documents issued by government authorities (see S/26185, annex I, para. 16). Unlike these official documents, traditional documents are not in themselves enough to prove eligibility to vote and only constitute supplementary evidence that the shiukhs can adduce where necessary. Further, it is understood that the cadis referred to in paragraph 16 of the compromise are cadis of long standing recognized by the Spanish authorities.

19. With respect to the review of individual applications to participate in the referendum (see S/26185, annex I, para. 25), the Secretary-General's proposal to take the necessary measures in the mission area rather than in New York or Geneva is an administrative arrangement, not directly related to the interpretation or application of the criteria; it does not constitute a "compromise" between differing positions. The arrangement would save time and resources and be more efficient. It does not seem very practical to bring a large number of shiukhs to New York or Geneva to scrutinize thousands of individual application forms and determine, solely on the basis of those forms, the eligibility of applicants to participate in the referendum. In the absence of original supporting documents, which obviously could not be attached to the application forms because they might be lost, such an exercise would be considerably more costly and lengthy than useful. Since the shiukhs are covered in the area by the agreements on immunities and privileges, the procedure proposed in paragraph 25 of the compromise merits further consideration.

20. With respect to the fourth criterion (see S/26185, annex I, paras. 8-11), an applicant's eligibility to vote does not automatically entitle the father to participate in the referendum. Nevertheless, the father is entitled to apply to participate on the basis of any one of the criteria. Recognition of that right does not constitute an additional criterion for eligibility to vote for the following reasons: whereas members of the immediate family of an applicant included in the 1974 list (first criterion) or having resided in the Territory in 1974 (second criterion) are automatically entitled to participate in the referendum (third criterion), the father of a person eligible under the fourth criterion does not automatically have that right. He would have to meet, to the satisfaction of the Identification Commission, the conditions laid down in one of the established criteria and produce his own evidence of eligibility to vote.

21. With regard to paragraph 13 of the compromise text, relating to the fifth criterion concerning residence of an applicant in the Territory for six

consecutive years or intermittently for 12 years prior to 1 December 1974, the Secretary-General's proposal is intended to reconcile application of this criterion with that of the second criterion (see S/26185, annex I, para. 6). The second criterion does not require a minimum residency period in Western Sahara, and it is enough for the applicant to prove that he was in the Territory at the time of the census, which was completed on 30 November 1974. Thus, in order to avoid any contradiction, paragraph 13 of the compromise text proposes, for the application of the fifth criterion, residency periods prior to the census.

22. With respect to the second criterion, the Secretary-General's interpretation takes into account the periodic cross-border movements by the Saharan nomads of the Territory.

23. Concerning the use of experts to ensure the authenticity of the supporting documents (see S/26185, annex I, para. 19), it is understood that they would be international experts, from neither of the parties or any neighbouring country.

Annex II

[Original: French]

Letter dated 4 February 1994 from the Special Representative of the Secretary-General addressed to the representative of the Frente POLISARIO

I have the honour to acknowledge receipt of your reply dated 7 November 1993 to the "explanatory note relating to the compromise proposed by the Secretary-General concerning the interpretation and application of the criteria for eligibility to vote" which I sent you on 27 September 1993.

Noting the reasons why the Frente POLISARIO maintains its reservations on, and proposed amendments to certain provisions of the compromise text, I should like in this letter to offer some considerations which I expressed to the authorities concerned during my recent visit to the mission area from 2 to 13 January 1994. In my view, these considerations are worth bearing in mind in seeking an understanding on those provisions of the compromise which still pose difficulties.

It might be useful, first of all, to define the fundamental problem confronting the Frente POLISARIO as follows: since the criteria set forth by the previous Secretary-General in his report of 19 December 1991 (S/23299) enlarge the electorate beyond the persons included in the 1974 census, there is a danger that application of these criteria might result in the fraudulent and unverifiable inclusion of persons who are not Saharans from the Territory. In the view of the Frente POLISARIO the Secretary-General's proposed compromise does not guarantee against that risk; in particular, the provisions of the compromise relating to tribal links with the Territory and the shiukhs could skew the composition of the electorate.

How can we guard against this danger? In that effort, it also may be useful to recall that the United Nations main task is to enable the people of the Territory of Western Sahara freely to exercise its right to self-determination. In carrying out that mandate, the United Nations must permit all Saharans existing in the Territory, but only them, to have a say in their future. It follows that the United Nations must see to it not only that all potential voters (a) are authentic Saharans but also (b) that they belong to the Territory. At all events, application of the criteria for eligibility to vote must be based on these two essential conditions, and it is in that spirit that the Secretary-General's compromise was formulated.

It follows from these preliminary observations that the provisions of the proposed compromise will have to be applied in a judicious and well thought-out manner. In the absence of any scientific or mathematical formula which would establish the parameters of the potential electorate, it is clear that the Identification Commission's common sense and good judgement, knowledge of history and objectivity will prevail. It is worth adding that the members of the Security Council will follow the Commission's work very closely at all stages.

As we all know, the difficulties relate to the eligibility to vote of Saharans from the Territory who, for one reason or another, were not included in the 1974 census. Regardless of the number of people currently in the Territory and the number of applications to participate in the referendum, it will be up to the Identification Commission to approve or reject the application of each individual. Whether the 1974 census is taken as the "basis" or as the "point of reference" for the establishment of the electorate, it seems to me not unreasonable to assume, without prejudice to the total number of potential voters, that Saharans who were not included in the census will not constitute a majority of the electorate.

With regard to these uncounted persons, the question whether they are members of a subfraction of Saharan tribes "existing" in the Territory is of paramount importance. It is therefore not difficult to understand the Frente POLISARIO's concern in that regard. Let us assume, for example, that subfraction x, known historically as belonging to a region outside of the Territory, is represented in the 1974 census by only a handful of individuals but that thousands of members of that subfraction are applying to participate in the referendum under the fourth or fifth criterion. The Commission will have to consider these applications with particular care, and in any case deal with them not as a group but individually. There is reason to emphasize again that, according to the proposed compromise, membership in a Saharan subfraction included in the 1974 census is a necessary condition but is not sufficient in itself. In the above-mentioned example, the Commission will therefore have to determine, in particular, the plausibility of the evidence offered by the people concerned, whether or not these facts are supported by documents or by oral testimony. The burden of proof lies with the applicant, and if the Commission has any doubts it can reject the application.

It should also be borne in mind that the Commission's mandate provides for appeals, including appeals challenging the issuance of voters' cards. Since, under the settlement plan, the Commission is to publish lists of potential voters at each stage of its work, it is clear that the decision taken on each individual case cannot be taken in secret. Moreover, observers from the parties and from the Organization of African Unity (OAU) will be present during the identification and registration process in the Territory and outside the Territory and, thus, will be able to submit any relevant comments.

(Signed) Sahabzada YAQUB-KHAN
Special Representative of the
Secretary-General for
Western Sahara